

Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### § 7754. Regulations and orders

The Secretary may issue such regulations and orders as the Secretary considers necessary to carry out this chapter.

(Pub. L. 106-224, title IV, § 434, June 20, 2000, 114 Stat. 453.)

##### REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title IV of Pub. L. 106-224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and Tables.

##### TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### § 7755. Protection for mail handlers

This chapter shall not apply to any employee of the United States in the performance of the duties of the employee in handling the mail.

(Pub. L. 106-224, title IV, § 435, June 20, 2000, 114 Stat. 453.)

##### REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title IV of Pub. L. 106-224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and Tables.

#### § 7756. Preemption

##### (a) Regulation of foreign commerce

No State or political subdivision of a State may regulate in foreign commerce any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order—

- (1) to control a plant pest or noxious weed;
- (2) to eradicate a plant pest or noxious weed;

or

- (3) prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed.

##### (b) Regulation of interstate commerce

###### (1) In general

Except as provided in paragraph (2), no State or political subdivision of a State may regulate the movement in interstate commerce of any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order to control a plant pest or noxious weed, eradicate a plant pest or noxious weed, or prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed, if the

Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States.

#### (2) Exceptions

##### (A) Regulations consistent with Federal regulations

A State or a political subdivision of a State may impose prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, biological control organisms, plant pests, noxious weeds, or plant products that are consistent with and do not exceed the regulations or orders issued by the Secretary.

##### (B) Special need

A State or political subdivision of a State may impose prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds that are in addition to the prohibitions or restrictions imposed by the Secretary, if the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

(Pub. L. 106-224, title IV, § 436, June 20, 2000, 114 Stat. 453.)

##### TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### § 7757. Severability

If any provision of this chapter or application of any provision of this chapter to any person or circumstances is held invalid, the remainder of this chapter and the application of the provision to other persons and circumstances shall not be affected by the invalidity.

(Pub. L. 106-224, title IV, § 437, June 20, 2000, 114 Stat. 454.)

##### REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title IV of Pub. L. 106-224, June 20, 2000, 114 Stat. 438, known as the Plant Protection Act, which is classified principally to this chapter. For complete classification of title IV to the Code, see Short Title note set out under section 7701 of this title and Tables.

#### § 7758. Repeal of superseded laws

##### (a), (b) Omitted

##### (c) Effect on regulations

Regulations issued under the authority of a provision of law repealed by subsection (a)<sup>1</sup>

<sup>1</sup> See Codification note below.

shall remain in effect until such time as the Secretary issues a regulation under section 7754 of this title that supersedes the earlier regulation.

(Pub. L. 106-224, title IV, § 438, June 20, 2000, 114 Stat. 454.)

#### CODIFICATION

Section is comprised of section 438 of Pub. L. 106-224. Subsec. (a) of section 438 of Pub. L. 106-224 amended section 7759 of this title and repealed sections 148, 148a, 148c to 148f, 149, 150, 150a to 150g, 150aa to 150jj, 151 to 154, 156 to 164, 164a, 167, 1651 to 1656, and 2801 to 2813 of this title, and provisions set out as notes under sections 147a, 150, 150aa, 151, and 1651 of this title. Subsec. (b) of section 438 amended section 129a of Title 21, Food and Drugs.

#### TRANSFER OF FUNCTIONS

For transfer of functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under this chapter to the Secretary of Homeland Security, and for treatment of related references, see sections 231, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### § 7759. Fees for inspection of plants for exporting or transiting

(a) to (e) Repealed. Pub. L. 106-224, title IV, § 438(a)(3), June 20, 2000, 114 Stat. 454

#### (f) Authorization of appropriations; fees, late payment penalties, and accrued interest

(1) Notwithstanding paragraph (2), there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. Unless otherwise specifically authorized or provided for in appropriations Acts, no part of such sums shall be used to pay the cost or value of property injured or destroyed.

(2) The Secretary of Agriculture is authorized to prescribe and collect fees to recover the costs of providing for the inspection of plants and plant products offered for export or transiting the United States and certifying to shippers and interested parties as to the freedom of such plants and plant products from plant pests according to the phytosanitary requirements of the foreign countries to which such plants and plant products may be exported, or to the freedom from exposure to plant pests while in transit through the United States. Any person for whom such an activity is performed shall be liable for payment of fees assessed. Upon failure to pay such fees when due, the Secretary of Agriculture shall assess a late payment penalty, and such overdue fees shall accrue interest, as required by section 3717 of title 31. All fees, late payment penalties, and accrued interest collected shall be credited to such accounts that incur the costs and shall remain available until expended without fiscal year limitation. The Secretary of Agriculture shall have a lien for the fees, any late payment penalty, and any accrued interest assessed against the plant or plant product for which services have been provided. In the case of any person who fails to make payment when due, the Secretary of Agriculture shall also have a lien against any plant or plant product thereafter attempted to be ex-

ported by such person. The Secretary of Agriculture may, in case of nonpayment of the fees, late payment penalty, or accrued interest, after giving reasonable notice of default to the person liable for payment of such assessments, sell at public sale after reasonable public notice, or otherwise dispose of, any such plant or plant product upon which the Secretary of Agriculture has a lien pursuant to this section. If the sale proceeds exceed the fees due, any late payment penalty assessed, any accrued interest and the expenses of the sale, the excess shall be paid, in accordance with regulations of the Secretary of Agriculture, to the owner of the plant or plant product sold upon the owner making application therefore with proof of ownership, within six months after such sale, and otherwise the excess shall be credited to accounts that incur the costs and shall remain available until expended. The Secretary of Agriculture shall, pursuant to regulations as prescribed by the Secretary of Agriculture, suspend performance of services to persons who have failed to pay such fees, late payment penalty and accrued interest.

(Sept. 21, 1944, ch. 412, title I, § 102, 58 Stat. 735; June 17, 1949, ch. 220, 63 Stat. 200; Pub. L. 85-36, title II, § 201, May 23, 1957, 71 Stat. 35; Pub. L. 94-231, § 1, Mar. 15, 1976, 90 Stat. 215; Pub. L. 101-624, title XXV, §§ 2504, 2509(b), Nov. 28, 1990, 104 Stat. 4068, 4070; Pub. L. 106-224, title IV, § 438(a)(3), June 20, 2000, 114 Stat. 454.)

#### CODIFICATION

Section was formerly classified to section 147a of this title.

Section was not enacted as part of the Plant Protection Act which comprises this chapter.

#### AMENDMENTS

2000—Subsecs. (a) to (e). Pub. L. 106-224 struck out subsecs. (a) to (e), which authorized measures for control and eradication of plant pests, set forth provisions relating to intergovernmental cooperation and responsibility of cooperating foreign agencies, defined terms as used in this section, and authorized rules and regulations to provide for inspection and certification of plants and plant products offered for export or transiting the United States.

1990—Subsec. (b). Pub. L. 101-624, § 2504, substituted “foreign countries” for “all countries of the Western Hemisphere” and inserted “foreign or” before “international”.

Subsec. (f). Pub. L. 101-624, § 2509(b), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “There are hereby authorized to be appropriated such sums as the Congress may annually determine to be necessary to enable the Secretary of Agriculture to carry out the provisions of this section. Unless otherwise specifically authorized, or provided for in appropriations, no part of such sums shall be used to pay the cost or value of property injured or destroyed.”

1976—Subsecs. (a) to (d). Pub. L. 94-231 redesignated existing provisions of subsec. (a) as subsecs. (a) to (d) and broadened Secretary’s authority to control and eradicate plant pests and animal diseases, extended Secretary’s authority to cooperate with foreign governments, and inserted definitions for “plant pest” and “living stage”. Former subsecs. (b) and (c) redesignated (e) and (f), respectively.

Subsec. (e). Pub. L. 94-231 redesignated subsec. (b) as (e) and made discretionary the Secretary’s authority to provide phytosanitary inspection and certification service for domestic plants and plant products offered for export or transit in the United States.

Subsec. (f). Pub. L. 94-231 redesignated subsec. (c) as (f) and substituted provisions authorizing appropria-